File No. 85 of 1935.

Collection No.

19

A

CB 1/7/47

Office of the Resident

in Mysore,

Bangalore.

(W)

X

Pros. / Serial Nos. 1- 6

Subject.

Recovery from Mr. G. H. Unger of the maintenance Charges of his wife who is a patient in the Mental Hospital at Bangalore city.

Previous References.

F. 191-34 (W)

Later References.

~~F~~

F. No. 139/36 (W)

F. 82-37

A

15/7/46

S. 97—(Blue).

MFP—168S&P—(M-184)—11-8-34—60,000.

NOTES AND PRECIS.

D.No. 8330 S.N. 7 Cor.p. 10

Please see paras 2 to 10 of notes and S.N. 4 and 5 of file No. 191 of 1934.

On 5-12-1334, Mr Unger remitted a sum of Rs 200/- direct to the Superintendent, Mental Hospital, Bangalore City, being the maintenance charges of his wife. With S.N. 5 the District Magistrate, C & M Station, Bangalore, forwarded another bill for Rs 178-1-3 being the maintenance charges of Mrs. Unger in the Mental Hospital for the month of April, May, June and July 1935 and the arrears due by Mr. Unger. The bill was sent to Hyderabad Residency for recovering the amount from Mr. Unger. He now states that he is no longer responsible for the maintenance of the patient in question. A copy of p.u.c. with enclosures may be forwarded to the District Magistrate, C & M Station, Bangalore, who will take necessary action to recover the amount from the legal guardian of the patient, after consulting the Government Pleader.

Draft submitted.

(From para 4)

18.9.35

T.N.T.
19-9-35.

D if with

S.N. 1. Cor.p. 1
85—35
of K
of K

S.N. 6
Cor.p. 8
of K

S.N. 7
Cor.p. 10

File handed over by Hs. on 20/9.

The question relates to the recovery of a sum of Rs.178/1/3 being the arrears payable up to the end of July 1935 on account of the detention in the Mysore Govt. Mental Hospital at Bangalore of Mrs. Unger, formerly Miss. A. Francis.

The facts of the case may briefly be restated to make the position clear. Miss. Francis was first admitted as an inpatient in the hospital in Feb. 1927 when she was under the protection of her father, He pleaded inability to pay the cost of her detention in the hospital and it was therefore met by Govt. from the M.A.T. revenues presumably under sec. 86(1) of the Lunacy Act. There is no information in the file as to how long Miss Francis remained in the hospital. In Feb. 1929 two years after her first entry she reentered the hospital and appears to have been there ever since. During the interval between the first and second entries she was married to Mr. Unger, a clerk in the Hyderabad Residency. Hospital charges from Feb. 1929 to July 1935 (assuming that she has been there during the entire period) at Rs. 15/- per mensem, the concession rate charged, would come to about Rs.1170/- Mr. Unger has paid under protest the entire charges except a sum of Rs. 178-1-3 which is now outstanding on her account to end of July 1935. Mr. Unger now claims that by a legal instrument executed on the 31st October 1934 he has been liberated from any connection with the patient and from all liability on her account which he says has been transferred to her natural guardian. There is no copy of the instrument in the file,

Legal provisions regarding the incidence of cost of maintenance of a patient in the mental hospital.

A lunatic (other than a military or criminal lunatic) may be admitted to an asylum in one of the following ways when he (she) is certified to be a lunatic by a medical officer:

(a) by a reception order passed by a magistrate upon the petition of a relative or friend(Sec.5-7, 10 & 11 of the Lunacy Act)

(b) by a reception order passed by a magistrate otherwise than on a petition viz., when it is reported by the Police that the lunatic is wandering or dangerous, or neglected or cruelly treated by any person or relative having charge of him or is not under proper care and control (Secs. 13-15)

(c) as the result of an inquistion by the District Court (Secx. 25 & chapter V of the Act).

The present case falls under (a) above. In such cases except when the lunatic is dangerous and unfit to be at large, no reception order should be made unless the petitioner or some other person engages in writing to meet the cost of maintenance of the lunatic [Sec. 11(b)]. If no engagement has been taken, the cost shall, subject to the provisions of any other Law, be paid by Govt. [Sec.86(1)]. The responsibility under the Act of a person upon whose petition a reception order has been made, may be transferred by the magistrate by a substitution order to any other person who is willing to undertake the same (Sec. 11A). But the liability of any relative or person to maintain any lunatic shall not be taken away or be affected by any provision of the Act (Sec.90). The net result of the above provisions is that in certain contingencies the cost is to be paid by Govt. to the authorities in charge of the asylum in which the lunatic is lodged. But the liablity of any relative or person to maintain the lunatic is not affected thereby. The Govt. may therefore recover at their option from such person or relative in the ordinary way the charges paid on account of the maintenance of a patient.

Mr. Unger's liability

Mr. Unger when he married Miss A. Francis became civilly liable for her maintenance. He could be relieved from this liability only by a dissolution of marriage or by divorce, granted by a competent court. Mental incapacity at the time

of marriage or force or fraud would be grounds for dissolution [Sec. 19 of the Indian Divorce Act, 1869]. If the marriage was however effected during a lucid interval it remains indissoluble with all its attendant incidents and liabilities. When a female lunatic is admitted into an asylum by a reception order passed upon a petition presented by her husband, the latter becomes liable for the cost of her maintenance in the asylum whether or not he had engaged in writing to meet such cost. A written engagement in such a case cannot in fact serve any purpose or impose any liability other than that arising under the ordinary Law. The written engagement would be useful as affording a cause of action only when there is no subsisting legal liability on the petitioner (e.g. when he is only a friend) to meet the cost of maintenance of the lunatic. The failure to get a written engagement from Mr. Unger has not therefore affected the position or liability which remains good until a dissolution of marriage or divorce has been obtained. It does not appear that Mr. Unger has obtained either of these reliefs.

The next point to be considered is the tenability of Mr. Unger's claim that he has been by a legal instrument dated the 31st Octr. 1924, executed with his wife's father, been liberated from any connection with the patient and from liability on her account. Mr. Unger's liability is an incident of his marriage and it cannot be avoided except by terminating that marriage either by dissolution or divorce. A father cannot perform either of those functions. It may be that the father might have agreed by the instrument in question to permit a substitution order to be passed against him under Sec. 11A of the Lunacy Act. This substitution order has reference only to the liability arising from an engagement in writing referred to in section 11 (b) but not to liability arising from a different source which is saved by Sec. 90 of the Act. A substitution order cannot help Mr. Unger.

11

It is open to Mr. Unger nowever to apply for the discharge of the patient; and the application would be granted if the patient is not dangerous and not unfit to be at large (Sec. 32 of the Lunacy Act). He could then arrange privately with the patient's 'natural guardian' for her care and treatment at home. Neverthless Mr. Unger's legal liability would remai so long as the marriage relationship lasts and he has the means to pay. Payment and recovery of charges.

12

The next point is the payment of the sums due and recovery of the amount from the person legally liable to pay. In the absence of direct payment by Mr. Unger there is, under section 86(1) of the Lunacy Act, a statutary liability on Govt. to pay. The charges are in the first instance payable by the C. & M. Station Administration as the patient was admitted on a reception order passed by the District Magistrate of the Station. But the amount is recoverable from Mr. Unger as already pointed in para 9 ante. He has not himself definitely declined to pay. On the other hand he agrees to abide by such orders as may be passed on his petition to the District Magistrate, by which he presumably means that he would himself pay if his petition to the D.M. were to be rejected. The point however is that his liability will not be affected one way or the other by any order that may be passed on his petition. The Lunacy Act (Secs. 88 & 89) provides a summary means of recovery from a person legally bound to maintain a lunatic. But unfortunately these provisions cannot be availed of in the present case as they do not apply to the case of a person who is admitted by a reception order passed on a petition. A suit might therefore be necessary in the event of non-payment or continued claim of non-liability; and it would be not only in the interest of Govt. but also that of the unfortunate patient whose right to maintenance would thus be established. If Mr. Unger succeeds in obtaining a dissolution of marriage, recovery will have to be waived

and the cost of maintenance in the hospital - present as well as future, if her continued detention in the hospital is considered necessary- will have to be met by Govt. No claim will however lie against Govt. for recovery of past payments made by Mr. Unger under protest.

13. Before taking action in the manner indicated in para 12 ante, the position may be explained to Mr. Unger through the Hyderabad Residency. In alternative draft is submitted.

4/XI.

(from para 4)

14. In view of Mr. Unger's statement at paragraph (1) of his letter I thought that the time had come to have the case examined from the legal point of view and accordingly gave it over to the Judicial Branch.

If Secretary agrees the alternate draft excluding paragraph 4 may issue.

12.11.38.

15. The examination of the legal aspect of the case is useful; but I do not think that it is for us to make the decision on Mr. Unger's request or even to offer (officially) any comment on it at the present stage. We must wait the Dist. Registrar's Guide

I.G. MAGISTRATE BANGALORE
18465/2
5 APR 1935
C35

I believe Mr. Unger's claim to be relieved of responsibility is valid and acceptable. He has only acted as a post-office because Mr. Unger happens to be employed as a clerk in the Hyderabad Residency; and we would only communicate to the Hyderabad Residency the decision of the Dist. Registrate.

16

The file may be sent o/o to Dist. Regr for comments. If he agrees, I suggest that we should only pass on the papers to him in the manner proposed in the original draft Endorsement.

15.11.35

The District Magistrate, C. & M. Station
Bangalore.

R.C. No: D. 6889 dated the 15th November 1935

OFFICE OF THE RESIDENT IN MYSORE
BANGALORE.
21 NOV. 1935
Regd. No. 11125

Mr. Unger's claim for exemption from payment of the charges cannot be entertained. I request that steps be taken to recover the arrears as usual and steps to be taken to recover the arrears as usual and this Secretary to the Resident in Hyderabad be asked to facilitate matters by making Unger monthly recoveries from his pay.

Secretary

20/11

Dist Magte.

R.O. 4652/C/35
20. XI. 35

Please see from paragraph 14 ante.

16

The position is that if Mr.Unger refuses to ma any further payments, we cannot force him to do so or insist upon recovery by deduction from his pay. As pointed out in para 12 of notes, a suit might be necessary in the event of non-payment or continued claim of non-liability. In view, however, of the District Magistrate's request, it is for consideration whether the draft submitted by the judicial clerk(excluding para 4) may issue.

17

In case it is decided to ask the Hyderabad Residency to make monthly recoveries from Mr.Unger's pay, the last para of the draft may if approved be amended as shown in pencil.

29.11.38

Asst. Secy.

20

I am not sure whether Secretary will in the light of Collector's note allow the draft to issue.

21

In the light of paragraphs 12 and 18 of the notes we ought not to ask the Hyderabad Residency to effect recoveries by regular monthly deductions; or to ask that Residency to require Mr. Unger to authorise them in writing to make regular monthly deductions. ~~please~~. On the whole therefore it would perhaps be as well to let paragraph 4 (to be) stand in toto.

17.12.38

Secy

We may simply write to the Hyderabad Residency

We really act only as a post office in a case like this. Our only proper course is to obtain Dist. Registrar's formal refusal to entertain Mr. Unger's claim for liberation from responsibility and exemption from payment and to communicate it to the Hyderabad Residency. Our standard [illegible] now send a copy of the papers officially to Dist. Regr. with the original simple draft endorsement. (See also para 16 of notes).

(It is for Dist. Regr to justify his refusal on the given reasons for it if necessary).

28/12

12.35.

Record

4.2.1936.

Record

16.2.36.

CORRESPONDENCE.

Please quote
No. 3366-J-1.
in further correspondence on the subject of this communication.

From

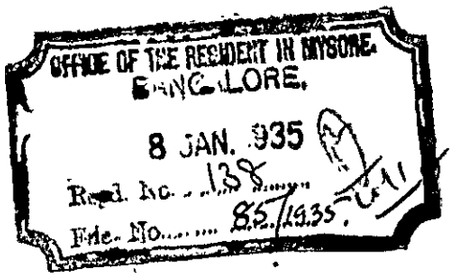
J. H. Thompson, Esquire, I.C.S.,

Secretary to the Hon'ble the Resident at Hyderabad,

To

The Secretary to the Hon'ble the Resident

in Mysore, Bangalore.



Dated Hyderabad Residency, the 5th January, *1935*.

Subject :- Recovery from Mr. G.H. Unger of the maintenance charges of a patient in the Mental Hospital, Bangalore City.

Sir,

In continuation of my letter No.3366-J, dated the 13th October, 1934, on the subject indicated above, I am directed to enclose a statement dated the 3rd January, 1935, submitted by Mr. G.H. Unger, showing that he has remitted a sum of Rs.200/- direct to the Superintendent, Mental Hospital, Bangalore City.

I have the honour to be,

Sir,

Your most obedient Servant,

J. H. Thompson 4.1.35.

Secretary to the Resident.

S.N.S
C.F. 13
F.191-7[illegible]
2

In continuation of my statement dated the 27th August 1934, I beg to submit as follows :-

On the 30th of October 1934 I wrote to the Superintendent of the Government Mental Hospital, Bangalore City, and explained to him the position existing at present.

A sum of Rs.200/- was sent by me on the 5th December 1934 direct to the Superintendent of the Hospital.

The balance due by me will be paid as soon as possible.

T. Bhyrappa

3rd January, 1935.

S 15-2

13.

THE OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE,

Bangalore, the 24th Jan. *193 5*

No. F.85-35
R.O.II.

A copy of the undermentioned paper(s) is forwarded to the

District Magistrate, Civil and Military Station, Bangalore,

for information, ~~in continuation of~~ with reference to the correspondence ending with (his)

~~Memorandum~~
letter
~~endorsement~~ ~~from~~

S.N.11 C.p.24 191-34. No. 5728-C-34 , dated the 13th November 1934

By order, etc.,

12/1

~~Secretary~~ Asst. Secy. to the Resident in Mysore.

List of papers.

S.N.1 p.1-2 Letter from the Secretary to the Hon'ble the Resident at Hyderabad, No.3366-J-1, dated the 5th January 1935, with enclosure.

S.H.

No. 1534-C-35.

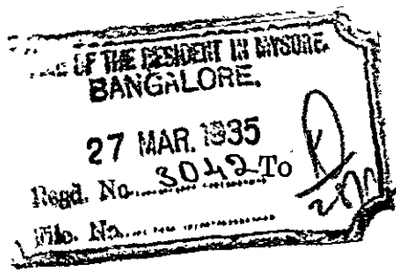
Office of the District Magistrate,
Civil and Military Station, Bangalore.

Dated 25th March 1935.

(4)

FROM

L.J.MacIver, Esq., M.A., I.C.S.,
DISTRICT MAGISTRATE, CIVIL AND MILITARY STATION,
BANGALORE,



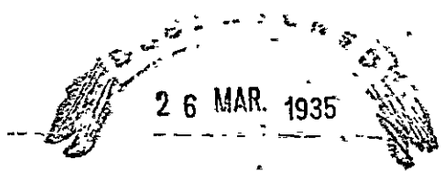
The Secretary to the Resident in Mysore,
Bangalore.

SIR,

Recovery of cost of maintenance - Mrs. Unger - patient in the Mental Hospital - Bangalore City - correspondence ending with your No.85-35 R.O.II dated 24-1-1935.

I forward herewith a bill for Rs.118-1-3 on account of maintenance charges of Mrs. H. Unger received from the Superintendent, Mental Hospital, Bangalore City, and request that the amount now due may be recovered from Mr. Unger.

I have the honour to be,
Sir,
Your most obedient servant,



DISTRICT MAGISTRATE.

15

MYSORE MEDICAL DEPARTMENT.

Mental Hospital,

Bangalore.

To

Mr. H. Unger,
Clerk, Political Department
Hyderabad Residency

Through
The District Magistrate,
C & M Station.

	Rs.	A.	P.
To maintenance charges of Mrs. Unger for the month of March 1935.	15	0	0
Towards arrears	103	1	3
Total.	118	1	3

Bangalore,
15th March 1935.

Sd. * * *
Superintendent,
Mental Hospital,
Bangalore.

O/C

S.N.L

16

DEPARTMENT.

BRANCH.

File No.

Serial No.

Draft Letter / Memorandum / Telegram

No. F.85-35 R.O.II. Dated 9/4/ 1935

Issued 2-4-35

Class for telegrams 4/35

Ordinary
Express
Urgent*
Priority
Clear Line†

*Only for Foreign Telegrams.

†Not for Foreign Telegrams.

To be issued on

Issued on

1st Reminder

2nd Reminder

3rd Reminder

Heading:

Case or Diary No.

If post copy of telegram required

Date of despatch of above

List of enclosures

(Code word for telegrams.)

S.N.1 c.p.l. (K)

To

The Secretary to the Hon'ble the Resident at Hyderabad.

Recovery from Mr.G.H.Unger of the maintenance charges of a patient in the Mental Hospital, Bangalore City.

Sir,

With reference to the correspondence ending with your letter No.3366-J-1, dated the 5th January 1935, I am directed to forward a bill for Rs.118-1-3 on account of the maintenance charges of Mrs.Unger up to end of March 1935 and to request that, if there is no objection, Mr.Unger may kindly be directed to pay the amount at an early date.

I have etc.,

for SECRETARY TO THE RESIDENT.

1. A. 35

-158(Genl)MFP.—(M-1983)—3-5-34—50,000 Pads.

S.W.

No. 4652-C-35. Enc/

OFFICE OF THE DISTRICT MAC
CIVIL AND MILITARY STATION, BANGALORE

Dated 23rd August 1935.

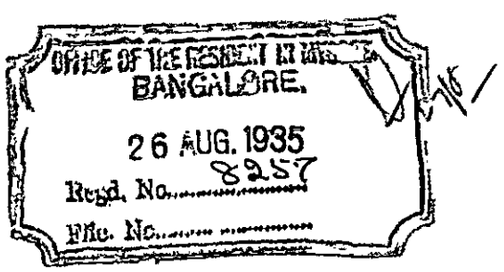
FROM

F. R. Brislee, Esquire, I.C.S.,
DISTRICT MAGISTRATE, CIVIL AND MILITARY STATION,
BANGALORE.

To

The Secretary
to the Hon'ble the Resident in Mysore,
BANGALORE.

SIR,



Maintenance charges - Mrs.Unger - recovery of - requested.

I forward herewith a bill for Rs.178-1-3 received from the Superintendent, Mental Hospital, Bangalore City, on account of maintenance charges of Mrs.Unger and request that the amount may be recovered from Mr.Unger.

I have the honour to be,

Sir,

Your most obedient servant

DISTRICT MAGISTRATE.

23.8.

S.N.6.

18

DEPARTMENT.

BRANCH.

File No.

Serial No.

Issued KRN 5.9.35.

Draft Letter / ~~Memorandum~~ / ~~Telegram~~

No. F.85-35 / R.O. II Dated 5th ~~August~~ September 1935

Class for telegrams | Ordinary / Express / Urgent* / Priority / ~~Class Limit~~† | *Only for Foreign Telegrams. †Not for Foreign Telegrams.

To be issued on | Issued on

1st Reminder

2nd Reminder

3rd Reminder

Heading :

Case or Diary No.

If post copy of telegram required

Date of despatch of above

List of enclosures

(Code word for telegrams.)
S.N. 4
c.p.6

Enc. to S.N.5
f.u.c.

The Secretary to the Resident.

To

The Secretary to the Hon'ble the Resident at Hyderabad.

Recovery from Mr. G.H.Unger of the maintenance charges of a patient in the Mental Hospital, Bangalore City.

Sir,

I am directed to refer to my letter No.F.85-35/R.O.II, dated the 9th April 1935, and to forward a fresh bill for Rs.178-1-3 on account of the maintenance charges of Mrs. Unger up to end of July 1935.

2. I am to request that if there is no objection, Mr. Unger may kindly be ~~directed~~ asked to pay the arrears at a very early date.

I have, etc.,

20/9/35.

for Secretary to the Residen

S.S.

[MGIPC—S1—158(Genl)MEP—(M-1933)—3-5-34—50,000 Pads.

24/9/35

MYSORE MEDICAL DEPARTMENT.

MENTAL HOSPITAL,

BANGALORE.

No.3

To

Mr. Unger,
Clerk, Political Department,
Hyderabad Residency,
Hydrabad (Deccan)

						Rs.	a.	p.
To maintenance charges of Mrs. Unger								
for the month of April 1935	..	..	..			15	0	0
Do	May 1935	..	..	..		15	0	0
Do	June 1935	..	..	..		15	0	0
Do	July 1935	..	..	..		15	0	0
Towards arrears		..	..	..		118	1	3
				Total..		178	1	3

Sd.

Bangalore,
21st August, 1935.

Superintendent,
Mental Hospital,
Bangalore.

Through

The District Magistrate,
Civil and Military Station,
B a n g a l o r e.

o/e.

KRS.

(10

Please quote

No. 3152-I.
F.275/1935.
in further correspondence on the subject of this communication.

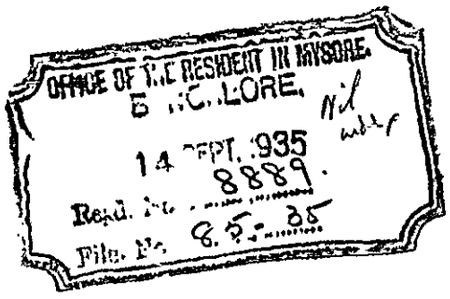
From

J.H.Thompson, Esquire, I.C.S.,

Secretary to the Hon'ble the Resident at Hyderabad,

To

The Secretary to the Hon'ble
the Resident in Mysore,
B a n g a l o r e.



Dated Hyderabad Residency, the 12 September, *1935*.

Subject:- Recovery from Mr. G.H.Unger of the maintenance charges of a patient in the Mental Hospital at Bangalore.

Sir,

With reference to your letter No.F.85-35/M.C.H., dated the 5th September 1935, I am directed to enclose a statement dated the 9th September 1935, submitted by Mr.G.H.Unger in which he shows that he is no longer responsible for the maintenance of the patient in question in the Mental Hospital at Bangalore.

2. The bill for Rs.178-1-3 received with your letter, is accordingly returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,

J.H. Thompson 12.9.35

Secretary to the Hon'ble
the Resident.

F.H.C.

Subject :- Recovery from Mr. G.H. Unger of the maintenance charges of a patient in the Mental Hospital, Bangalore City.

S.N.H. C.P.D. F 85-35 (K)

With reference to Mysore Residency letter No.F.85-35.II, dated 9th April 1935, it is respectfully submitted.

(1) On the 31st of October 1934, by a legal instrument all liability on the part of the undersigned for or on behalf of the patient in question, or the charges payable to the Mental Hospital, Bangalore City, was transferred to the patient's natural guardian, and the undersigned has by the instrument mentioned above been liberated from any connection whatsoever with the patient in question now in the Mental Hospital, Bangalore City.

(2) In pursuance of the orders issued in the beginning of the year 1929 by the District Magistrate of the Civil and Military Station of Bangalore, the hospital charges on behalf of the patient in question have been recovered from the undersigned but under protest only.

(3) The undersigned has now the necessity of petitioning the District Magistrate of the Civil and Military Station of Bangalore for the cancellation of his orders mentioned in (2) above and for the law to take its course for the recovery of the hospital charges from the natural and legal guardian of the patient in question.

(4) Should the undersigned's petition in (3) above fail for any reason in the Court of the District Magistrate Bangalore, the undersigned will conform to such orders as may be passed in the case without delay.

Hyderabad Deccan.
9th September 1935.

(G. H. Unger.)

THE OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE,

Bangalore, the ~~September~~ 4th Jan 193 6

No. F. 85-35
R.O.II.

A copy of the undermentioned paper(s) is forwarded to the District Magistrate, Civil and Military Station, Bangalore, for such action as may be considered necessary

for information ~~in continuation of~~ with reference to the correspondence ending with (his) ~~Memorandum~~ letter ~~endorsement~~ from ~~xxx~~

No. 4652-C-35, dated the 23rd August 1935, ~~for such action as may be considered necessary~~.

By order, etc.,

A. J. Courtney

~~Secretary~~ Asst. Secy. to the Resident in Mysore.

List of papers.

Letter from the Secretary to the Hon'ble the Resident at Hyderabad, No. 3152-J/F. 275/1935, dated the 12th September 1935, with enclosure.